

2:15-cv-01045-RFB-PAL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CUNG LE, et al.,  
Plaintiffs,  
vs.  
ZUFFA, LLC, d/b/a Ultimate  
Fighting Championship and  
UFC,  
Defendants.

)  
)  
) Case No. 2:15-cv-01045-RFB-PAL  
)  
) Las Vegas, Nevada  
) Friday, December 14, 2018  
) 2:12 p.m.  
)  
) MOTIONS HEARING  
)

---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THE HONORABLE RICHARD F. BOULWARE, II,  
UNITED STATES DISTRICT JUDGE

APPEARANCES: See Next Page

COURT REPORTER: Patricia L. Ganci, RMR, CRR  
United States District Court  
333 Las Vegas Boulevard South, Room 1334  
Las Vegas, Nevada 89101

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

2:15-cv-01045-RFB-PAL

1 difficult for me to resolve that without having the experts  
2 testify and hearing their testimony, observing them, to decide  
3 whether or not it's appropriate to use wage share or a  
4 percentage of event revenue as a legitimate economic model or  
5 not and who said that and whether or not it's appropriate to  
6 make these comparisons.

7           And so in reviewing that and in reviewing the case law,  
8 it seems to me that I have to make those determinations to be  
9 able to resolve the motion to certify because I have to tell you  
10 it seems to me, quite honestly, it comes down to the fact  
11 whether or not I accept Dr. Singer's expert opinions or  
12 Dr. Topel or whoever's opinions. That's essentially a central  
13 aspect to not just the motion to certify, the case basically, I  
14 mean. And it's also true that some aspects to this are somewhat  
15 unique in terms of the modeling, but it's also true that this is  
16 the first time that I can see there's a case in an industry like  
17 this and in this type of a trajectory that is something the  
18 courts have considered post Tyson and Comcast which I think  
19 changed the landscape for how courts look at these types of  
20 things.

21           All that is to say that it seems to me that the  
22 procedure that I think would be appropriate would be to have the  
23 experts and only the experts with the exception of one  
24 individual, which would be Mr. Silva, because I also think  
25 Mr. Silva's testimony is potentially crucial at least to be able

2:15-cv-01045-RFB-PAL

1 to evaluate whether or not there was in fact internal pay  
2 equity. And if there was, that's I believe potentially a  
3 separate basis.

4 So let me hear, Mr. Isaacson, your comment as it  
5 relates to that proceeding and what you think should be the  
6 contours or not of that in the context of this case. By my  
7 estimation that could take three or four days unfortunately in  
8 part because of the complex nature of some of the modeling and  
9 because you have different models for different aspects of the  
10 common impact, right.

11 MR. ISAACSON: Yes.

12 THE COURT: So it's not as if it's one model that  
13 covers all of these things, right. You have different models.  
14 You have different markets. You have different sort of null  
15 markets, if you will, that apply in the context of the  
16 comparisons between the fighters and ranked fighters. And so  
17 why don't you tell me what your thoughts are as it relates to  
18 that procedure in this case.

19 MR. ISAACSON: Well, essentially we agree with you,  
20 Your Honor, that for purposes of determining class certification  
21 and the central issue which underlies the plaintiffs' case as to  
22 how they're going to prove antitrust injury common throughout  
23 the class that this relies on the work of Dr. Snyder and the  
24 theory of both wage share and foreclosure share. Foreclosure --  
25 right now the regression is a relationship between foreclosure

2:15-cv-01045-RFB-PAL

1 It merely shows that -- it concludes that when -- basically a  
2 rising -- a rising tide raises all boats, but it doesn't show  
3 any actual common impact or amount of impact.

4 So while I would agree with -- agree with you that  
5 it's --

6 THE COURT: So you're saying it wouldn't be relevant to  
7 deciding whether or not there's certain factors like ranking  
8 that were uniformly considered or, you know, weight? I mean, it  
9 seems to me that at a minimum what a Zuffa witness, whoever it  
10 would be, would be able to say, "This is a factor we considered  
11 every single time."

12 Now, you could still make the argument that there are  
13 individual determinations that go into a single factor. I'm not  
14 saying you couldn't make that argument. But it seems to me that  
15 it's hard to not consider relevant a Zuffa employee's, who's  
16 been involved with compensation, testimony about whether or not  
17 a factor was uniformly considered. It doesn't mean that it  
18 establishes --

19 MR. ISAACSON: Right.

20 THE COURT: -- common impact. But it does mean that  
21 there is an issue to be addressed as relates to separating out  
22 the impact of the alleged antitrust injury versus common  
23 factors.

24 MR. ISAACSON: So I am not advancing the argument that  
25 it's irrelevant.